

NOT TO BE INCLUDED
IN BOUND VOLUMES

PJMcF
Riverside, CA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

PARKVIEW COMMUNITY
HOSPITAL MEDICAL CENTER

Employer

and

Case 21-RC-121299

SERVICE EMPLOYEES INTERNATIONAL
UNION, UNITED HEALTHCARE
WORKERS-WEST (SEIU-UHW)

Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board, by a three-member panel, has considered objections to an election held March 13, 2014, and the hearing officer's report recommending disposition of them.¹ The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 251 for and 190 against the Petitioner, with 7 void ballots and 19 challenged ballots, an insufficient number to affect the results.

¹ Although entitled "Hearing Officer's Report and Recommendations on Determinative Challenged Ballots and Objections to Conduct Affecting the Results of the Election," the hearing officer considered only Employer objections. We correct this inadvertent error.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the hearing officer's findings² and recommendations,³ and finds that a certification of representative should be issued.

² The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We have carefully examined the record and find no basis for reversing the findings.

³ The Employer filed 19 objections, but withdrew Objections 3, 5, 6, 9, 14, and 19 in its post-hearing brief. The hearing officer renumbered the remaining objections and thereafter recommended that all of them be overruled. The Employer has excepted to the hearing officer's recommendations to overrule Objections 1, 2, 4, 11-13, 15-18 (renumbered by the hearing officer as Objections 1-3, 7-13). In the absence of exceptions, we adopt pro forma the hearing officer's recommendation to overrule Objections 7, 8, and 10 (renumbered by the hearing officer as Objections 4-6).

With respect to the hearing officer's recommendation to overrule Objection 2, which alleges that Union agents surveilled or intimidated employees on their way to the polls, the Employer excepts to the hearing officer's finding that Union representative Daniel Lopez was stationed "several hundred feet away" from the polling area during the election. Even assuming, as the Employer submits, that the distance between Lopez and the polls was significantly less than the hearing officer's finding, his presence outside of the building where the polling occurred, absent evidence of coercion or other objectionable conduct, is insufficient to warrant setting aside the election. See e.g., *C & G Heating and Air Conditioning*, 356 NLRB No. 133, slip op. at 2 (2011) (union representative's presence 77 feet from entrance to polling site not objectionable); *Boston Insulated Wire & Cable Co.*, 259 NLRB 1118, 1119 (1982) (electioneering by union agents 10 feet from polling place not objectionable), *enfd.* 703 F.2d 876 (5th Cir. 1983).

With respect to the hearing officer's recommendation to overrule renumbered Objection 3, which alleges that the Union misrepresented employees' union support by distributing flyers containing employees' pictures without their consent, Member Johnson notes that although he has concerns about the potential of such conduct to interfere with the electoral process, he agrees that the Union's conduct was not objectionable under the circumstances of this case. Regarding the use of employee Megan Mirabel's picture without her consent, Member Johnson notes that there is no evidence as to how many flyers were distributed, and the Union, after learning of Mirabel's objection to using her photo, covered her image with tape before distributing flyers in the break room. Furthermore, there is no evidence that Mirabel, a single employee in a unit of approximately 500, held such a position of influence that public misrepresentation of her voting preference would broadly impact other employees' votes.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for Service Employees International Union, United Healthcare Workers-West (SEIU-UHW), and that

With respect to the hearing officer's recommendation to overrule Objection 15 (renumbered by the hearing officer as Objection 6), which alleges that the Board agents failed to properly supervise and control the voting list, thereby permitting an employee to cast a ballot under another employee's name and creating the appearance of voter fraud, Member Johnson notes that although voter fraud is a significant issue, here the Employer failed to meet its burden of proof. See *Farrell-Cheek Steel Co.*, 115 NLRB 926, 928 (1956)(absent specific evidence of actual fraud, the opportunity for fraud is not a basis for overturning an election).

Regarding Objection 17 (renumbered by the hearing officer as Objection 12), which alleges the Board agent failed to control the groups of Union supporters outside the polling area, we agree with the hearing officer that the individuals congregated in this area did not engage in any campaign activity or improper conduct, and therefore the Board agents' "failure" to control these people does not warrant setting aside the election. Moreover, we note that the individuals congregated in this area were not Union agents and, accordingly, any question of whether they engaged in objectionable conduct is considered by applying the standard for third-party conduct under *Westwood Horizons Hotel*, 270 NLRB 802, 803 (1984) (Board will not set aside an election based on third-party threats unless the objecting party proves that the conduct was "so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible.") Applying that standard, we agree with the hearing officer that the conduct of the Union supporters outside the building where the polling occurred does not warrant setting aside the election.

In adopting the hearing officer's recommendation to overrule Objection 18 (renumbered by the hearing officer as Objection 13), we find no merit in the Employer's contention that the Board agents' conduct destroyed the laboratory conditions necessary for a free and fair election. In cases involving allegations of Board agent misconduct, the question is whether the conduct at issue tends to destroy confidence in the Board's election process or which could reasonably be interpreted as impugning the Board's neutrality in the election. *Athbro Precision Engineering Corp.*, 166 NLRB 966 (1967). In other types of cases challenging the actions of a Board agent, the Board asks whether the conduct is sufficient to "raise a reasonable doubt as to the fairness and validity of the election." *Patient Care of Pennsylvania*, 360 NLRB No. 76, slip op. at 1 (2014) (citing *Polymers, Inc.*, 174 NLRB 282, 282 (1969), *enfd.* 414 F.2d 999 (2d Cir. 1969), *cert. denied* 396 U.S. 1010 (1970)). Having carefully considered the evidence concerning the Board agents' conduct, we agree with the hearing officer that, even cumulatively, it does not warrant setting aside the election under either potentially applicable standard.

it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All bio medical engineering techs II, bio medical engineers, C.T. techs, C.T. techs per diem, dexta scan techs, ER techs, ER techs per diem, GI lab techs, mammography techs, monitor techs, nuclear med techs, neurology techs, O/P radiology clinic CT/MRI techs, O/P radiology clinic radiology techs I, O/P radiology clinic radiology techs II, O/P radiology clinic sonographers, OB techs, pharmacy techs, phlebotomy I, phlebotomy II, cardio pulmonary (EKG techs/assistants), radiology techs, respiratory care practitioners I, respiratory care practitioners II, respiratory care practitioners III per diem, respiratory coordinators, sonographers, sonographers per diem, surgery techs, ultrasound techs, administrative secretaries, ASC unit secretaries, birth certificate specialists, buyers, CNAs, CNA per diems, cafeteria staff, catering staff, catering/med staff dining supervisors, clerical coordinators, dietary supervisors, cooks, cooks assistants (cold production), diet office staff, dietary secretaries, food service workers, gift shop cashiers, guest services, joint care coordinators, kitchen porters, lab assistants, lead baristas, lead pathology, lead respiratory practitioners, LVNs, LVNs newborn, LVN per diem leads I, nuclear med assistants, O/P radiology clinic X-ray clerks, OR assistants, OR schedule secretaries, OR supply/anesthesiologists LVNs, patient care attendants, perinatal/lactation educators, pharmacy clerks, rehabilitation aides, room service attendants, senior dietary clerks, social service/discharge planners, transporter/clerks, unit secretaries, coders I, coders II, coding supervisors, archivist/print shop techs H.I.M., discharge analysts, H.I.M. clerks, H.I.M. correspondents, H.I.M. techs, H.I.M. operation, pathologist transcriptionists, pathology assistants, physician representatives, receivers, stock expeditors, transcriptionists, transcription clerks, transcription supervisors, staffing coordinators, SPD techs, SPD techs per diem, SPD coordinators, and x-ray attendants employed by the Employer at its facility located at 3865 Jackson Street, Riverside, California; but excluding all other employees, information services employees, admitting personnel, clinical lab scientists, nutritionists, marketing

employees, medical staff employees, chaplains, human resource employees, insurance verifiers, Pyxis coordinators, master social workers, occupational therapists, accounting department employees, utilization review employees, physical therapists, PBX operators, speech therapists, business office clerical employees, skilled maintenance employees, professional employees, registered nurses, physicians, confidential employees, managers, guards, and supervisors as defined in the Act.

Dated, Washington, D.C., January 30, 2015.

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| Mark Gaston Pearce, | Chairman |
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| Harry I. Johnson, III, | Member |
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| Lauren McFerran, | Member |
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(SEAL)

NATIONAL LABOR RELATIONS BOARD